

ADVISORY OPINION 2003-002

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

May 9, 2003

Hon. John Whittle
P.O. Box 2765
Louisville, Kentucky 40201-2765

Dear Mr. Whittle:

This in reference to your April 18, 2003 request on behalf of the Friends of Ernie Fletcher gubernatorial campaign ("Fletcher campaign") for an advisory opinion by the Kentucky Registry of Election Finance ("Registry") regarding the payment of legal expenses by the Fletcher campaign. You ask the following questions, the Registry's response to which follows:

1. Can a principal in a law firm that is a personal service corporation volunteer his time in defending a legal action against the campaign committee?

The answer to your question is a qualified yes. As you correctly state, volunteer services are exempted from the definition of "contribution." KRS 121A.010(11)(b). Therefore a lawyer may volunteer his services to a gubernatorial slate campaign committee without making a contribution to the gubernatorial slate campaign committee.

However, an employee of a corporation must follow specific regulatory guidelines to avoid committing his corporate employer to an unlawful corporate contribution. KRS 121.025 and KRS 121.035. Specifically, under 32 KAR 2:170(5), no in-kind contribution results when an employee donates uncompensated time to the campaign in the following manner:

(5) No compensation shall be considered paid to any employee under the following conditions:

(a) If an employee is paid on an hourly or salaried basis and is expected to work a particular number of hours per period, no contribution results if the employee engages in activity for the benefit of a candidate, slate of candidates, committee, or contributing organization during what would otherwise be a regular work period, provided that the taken or released time is made up or completed by the employee within a reasonable time;

(b) No contribution results where an employee engages in activity for the benefit of a candidate, slate of candidates, committee, or contributing organization during what would otherwise be normal working hours if the employee is paid on a commission or piecework basis, or is paid only for work actually performed and the employee's time is considered his own to use as he sees fit; or

(c) No contribution results where the time used by the employee to engage in activity for the benefit of a candidate, slate of candidates, committee, or contributing organization is bona fide, although compensable, vacation or other earned leave time.

Although the principal of an incorporated law firm may not fall within the general definition of employee, provided the time he volunteers to the gubernatorial campaign committee may be considered his own, uncompensated time, no contribution should result under the foregoing provisions.

Note however that volunteer service under KRS 121A.010(11)(b) does not extend to the compensated staff and incidental expenses of the incorporated law firm relating to the legal defense of the gubernatorial campaign committee. Therefore, the Fletcher campaign should reimburse the incorporated law firm for all expenses other than the attorney's uncompensated time.

2. Do contributions received after the primary election pursuant to KRS 121.150(2) count as contributions attributable to the primary or contributions attributable to the general election for the purpose of contribution limits?

KRS 121A.050 limits a slate of candidates to contributions not to exceed more than one thousand dollars (\$1,000) per person in any one (1) election. Generally, no contributions may be received after the date of an election. KRS 121.150(14), (16).

However, a narrow exception to the post-election contribution prohibition permits a slate of candidates to solicit and accept contributions after the date of an election:

to defray necessary expenses that arise after the date of the election associated with election contests, recounts and recanvasses of a specific election, complaints regarding alleged campaign finance violations that are filed with the registry...or other legal actions...to which a ...slate of candidates, or campaign committee ... is a party.

KRS 121.150(20).

Although KRS 121.150(20) creates an exception to KRS 121.150(14) and (16), it does not permit a slate of candidates to exceed the per person contribution limit established by KRS 121A.050. In addition, the post-election acceptance of contributions relates specifically to "expenses that arise after the date of the election."

Therefore, the Fletcher campaign may not accept contributions exceeding one thousand dollars (\$1,000) per person per election, regardless of when the expenses are incurred. Funds of the Fletcher campaign may be used to defray necessary legal expenses. Funds received prior to the date of the primary election are subject to the primary election contribution limit and attributable to the primary election. Likewise, funds contributed after the date of the primary election apply toward an individual's contribution limits for the regular election and are attributable to the regular election. If any necessary legal expenses arise after the date of the primary election, the Fletcher campaign may use general election funds to defray those expenses.

This advisory opinion represents the Registry's consideration of the circumstances presented in your letter. If you have any further questions, please do not hesitate to contact the Registry's staff.

Sincerely,

Rosemary F. Center
General Counsel

RFC/jh

Cc: Registry Members
Sarah M. Jackson, Executive Director